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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/776,851	02/11/2004	Uwe Jurgen Becker	CM2687MQ	3886

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THE PROCTER & GAMBLE COMPANY
INTELLECTUAL PROPERTY DIVISION
WINTON HILL BUSINESS CENTER - BOX 161
6110 CENTER HILL AVENUE
CINCINNATI, OH 45224

EXAMINER

BOGART, MICHAEL G

ART UNIT	PAPER NUMBER
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3761

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/09/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/776,851

Applicant(s)

BECKER ET AL.

Examiner

Michael G. Bogart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections – 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. § 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 20 is rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 20 includes the limitation “immobilized when said absorbent core has absorbed more than 30% of the absorbent core storage capacity of said absorbent core”. Applicants indicate that support for this limitation is provided in the specification at page 9, lines 16 and 17. However, that only provides support for immobilization when an article is wet or at least partially loaded. Page 17, line 5, provides 50% laminate capacity during testing, but this is not the same as 30%.

Claim Rejections – 35 USC § 103

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(e), (f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 1-8, 10, 12-15 and 17-20 are rejected under 35 U.S.C. § 103(a) as obvious over Tanzer *et al.* (WO 01/15647 A1) hereinafter "Tanzer").

Regarding claims 1, 13 and 20, Tanzer teaches an absorbent core (12, 42, 50, 58) useful for an absorbent article (10) comprising a substrate layer (12) and absorbent material (58), said absorbent material (58) comprising an absorbent polymer material and *optionally* an absorbent fibrous material, said absorbent fibrous material not representing more than about 20 % of the weight of absorbent polymer material, wherein said absorbent material (58) is immobilized (trapped in pocket regions (50)) when wet such that said absorbent core (12, 42, 50, 58) achieves a wet immobilization (liquid is immobilized in the pockets (50) by the superabsorbent (58))(page 6, line 12-page 8, line 2)(see fig. 3, *infra*).

Tanzer does not expressly disclose the specific degree of wet immobilization. This is a functional limitation. Apparatus claims must be structurally distinguishable over the prior art. MPEP § 2114.

Generally, optimization of ranges of performance test vectors will not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating

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such test characteristic is critical. “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

A particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of said variable might be characterized as routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). Regarding claims 1-20, the benefits of immobilizing the inner materials of a diaper when soaked with urine would have been known prior to applying a test (e.g., preventing the absorbent materials from bunching up excessively in discrete areas of the diaper causing discomfort to a wearer, or aesthetic considerations), making these values result-effective variables. One of ordinary skill in the art would have recognized that increasing the wet immobilization properties of the absorbent material in a diaper or similar article would increase its resistance to moving around between top and back sheets and would prevent the absorbent from bunching up uncomfortably. MPEP § 2144.04.

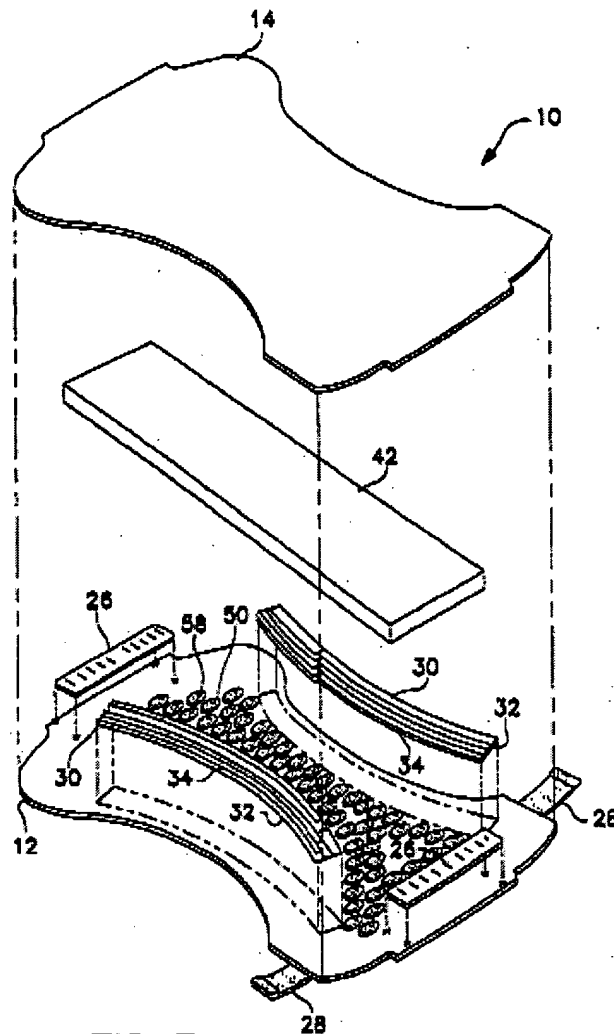


FIG. 3

Regarding claims 2 and 17, Tanzer teaches a thermoplastic material (12, 42), which contacts said absorbent polymer material (58)(page 9, line 28-page 10; line 16).

Regarding claims 3 and 19, Tanzer teaches that the thermoplastic material includes a hot melt adhesive (page 11, lines 12-19).

Regarding claim 4, Tanzer teaches that said thermoplastic material (12, 42) is fiberized or fibrous (page 9, line 3-page 10, line 10, line 2).

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Regarding claims 5 and 18, Tanzer teaches that said thermoplastic material (12, 42) substantially immobilizes said absorbent polymers (58)(page 11, lines 12-19).

Regarding claim 6, Tanzer *et al.* teaches the absorbent core (12, 42, 50, 58) having a distribution of absorbent polymer material wherein the distribution of absorbent polymer material is profiled (polymer (58) distribution changes along longitudinal length of sheet (12))(see fig. 3, *supra*).

Regarding claims 8 and 14, Tanzer teaches at least two substrate layers (12, 42).

Regarding claims 10 and 15, Tanzer teach at least one substrate layer (12) and at least one cover layer (42).

Regarding claims 7 and 12, mere changes in size alone are not sufficient to patentably distinguish an invention over the prior art. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (Fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of relative dimensions of the claimed device and a device having the claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device. MPEP § 2144.04.

Claims 9, 11 and 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Tanzer as applied to claims 1-8, 10, 12-15 and 17-20 above, and further in view of Sauer (US 5,527,300 A).

Tanzer does not expressly teach a hydrophilic nonwoven substrate.

Sauer teaches a hydrophilic nonwoven surge management layer (46) disposed over an absorbent core (col. 23, lines 31-38).

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At the time of the invention, it would have been obvious to one of ordinary skill in the art to substitute the surge management layer of Tanzer with the surge management layer of Sauer in order to provide a layer that is known in the art to be suitable for managing liquid surges.

Response to Arguments

Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Bogart whose telephone number is (571) 272-4933.

In the event the examiner is not available, the Examiner's supervisor, Tatyana Zalukaeva may be reached at phone number (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300 for formal communications. For informal communications, the direct fax to the Examiner is (571) 273-4933.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Michael Bogart
3 January 2007

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

